IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No.3500 of 2006
Date of decision : 26.10.2006.

Chhaju Ram

.....Petitioner.

Versus

Mahender Singh and Ors.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Sharad Kumar Yadav, Advocate
for respondent No.1.

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VINOD K. SHARMA,J.(ORAL)

By way of present revision petition challenge is to order passed by the learned Addl. Civil Judge (Sr. Divn.), Narnaul vide which the petitioner has been denied the right to file the written statement on the ground that in spite of number of opportunities having been taken, the written statement was not filed by the petitioner herein.

The petitioner had moved an application for permission to place on record the written statement on the ground that on 20.9.2005 son of petitioner No.1 had died and, therefore, he could not be present in the Court when the case was called. It was further the case of the petitioner that in the afternoon the petitioner appeared before the Court and sought permission to place on record the written statement, however, the same was declined as

the defence of the petitioner has been struck of in the morning when the case was called.

The learned counsel for the petitioner prayed that it was on account of the death of the son of petitioner No.1 that he could not be present in the Court when the case was called. However, on the refusal to take written statement on record on 22.9.2005 an application was moved on 24.9.2005 along with the written statement seeking permission to place the same on record. The said application was also declined.

The learned counsel for the respondents has opposed the revision petition primarily on the ground that the petitioner had taken a wrong stand to the effect that the written statement was filed on 22.9.2005. The stand of the learned counsel for the respondents is that in fact the application was moved only on 24.9.2005 and not on 22.9.2005, as alleged. Therefore, it is claimed that the petitioner is not entitled to a discretionary relief under Article 227 of the Constitution of India.

I have considered the contentions raised by the learned counsel for the parties. The petitioner had nowhere stated that he had moved an application on 22.9.2005. Rather the case of the petitioner is that as on 22.9.2005 written statement was not accepted on account of the order striking off his defence having been passed, he thereafter, moved the application on 24.9.2005. The contention raised by the learned counsel for the respondents that there has been mis-statement by the petitioner regarding the date of filing the application, thus, cannot be accepted.

However, it may be noticed that it was within the jurisdiction of the Court to have struck off the defence of the petitioner as he had failed to

file the written statement in spite of number of opportunities having been given to him. However, keeping in view the fact that prior to the date fixed son of the petitioner No.1 had died, therefore, the court should have accepted the written statement though filed late on the date fixed or in any case an opportunity could have been given to the petitioner to place the written statement on record.

Keeping in view the facts and circumstances stated above, this revision petition is allowed, the impugned order is set aside and the petitioner is granted one last opportunity to file written statement. However, it shall be subject to payment of costs of Rs. 5000/-. The cost is being imposed as the petitioner failed to file the written statement in spite of number of opportunities having been availed.

It is clarified that injunction order passed in favour of respondents-plaintiffs would remain in operation till the application moved for temporary injunction is disposed of on merits after taking the written statement on record.

October 26,2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**